

MONTANA LEGISLATIVE HISTORY

Chapter 131 19 91Bill H _____ S 13c Original bill & history ✓ cH. Committee on Labor + Employment Relations S. Committee on Labor + Employment RelationsHearing Date(s) Mar 09 ✓ c

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Hearing Date(s) Jan 31 ✓ c

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_____ c

Date Out Mar 08 ✓ cFeb 04 ✓ cDid this bill originate in an interim committee? Yes No

Committee _____

Report _____

SENATE BILL NO. 130

INTRODUCED BY KENNEDY, PIPINICH, THAYER, CONNELLY,
WANZENRIED, MEASURE, COHEN, O'KEEFE, T. BECK,
VAN VALKENBURG, DOHERTY, HARPER, BECKER, BRUSKI,
HOCKETT, GROSFIELD, JERGSON, CRIPPEN, SVRCEK,
DEVLIN, MAZUREK

IN THE SENATE

JANUARY 18, 1991

INTRODUCED AND REFERRED TO COMMITTEE
ON LABOR & EMPLOYMENT RELATIONS.

FIRST READING.

FEBRUARY 4, 1991

COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 5, 1991

PRINTING REPORT.

FEBRUARY 12, 1991

SECOND READING, DO PASS.

FEBRUARY 13, 1991

ENGROSSING REPORT.

THIRD READING, PASSED.
AYES, 49; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 14, 1991

INTRODUCED AND REFERRED TO COMMITTEE
ON LABOR & EMPLOYMENT RELATIONS.

FIRST READING.

MARCH 8, 1991

COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 11, 1991

SECOND READING, CONCURRED IN.

MARCH 12, 1991

THIRD READING, CONCURRED IN.
AYES, 92; NOES, 5.

RETURNED TO SENATE.

IN THE SENATE

MARCH 13, 1991

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

SENATE FINAL STATUS

SB 130

2/04	2ND READING PASSED AS AMENDED	49	0
2/05	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
2/06	FIRST READING		
2/06	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/14	HEARING		
4/01	TABLED IN COMMITTEE		

SB 128 INTRODUCED BY HALLIGAN, ET AL.

ALLOW UNINCORPORATED RESORT AREA TO LEVY RESORT TAX

1/17	INTRODUCED		
1/18	REFERRED TO TAXATION		
1/18	FIRST READING		
1/30	HEARING		
2/05	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/06	2ND READING PASSED AS AMENDED	38	9
2/07	3RD READING PASSED	39	10
	TRANSMITTED TO HOUSE		
2/09	FIRST READING		
2/09	REFERRED TO TAXATION		
2/21	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED		
4/10	2ND READING CONCURRED	55	41
4/11	3RD READING CONCURRED	58	37
	RETURNED TO SENATE		
4/17	SIGNED BY PRESIDENT		
4/18	SIGNED BY SPEAKER		
4/18	TRANSMITTED TO GOVERNOR		
4/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 549		

EFFECTIVE DATE: 7/01/91

SB 129 INTRODUCED BY FRITZ, ET AL.

CREATE THE OFFICE OF THE CHILDREN'S ADVOCATE

1/17	INTRODUCED		
1/18	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
1/18	FIRST READING		
1/18	FISCAL NOTE REQUESTED		
1/23	FISCAL NOTE RECEIVED		
1/24	FISCAL NOTE PRINTED		
1/25	HEARING		
2/05	COMMITTEE REPORT—BILL NOT PASSED		
2/05	ADVERSE COMMITTEE REPORT ADOPTED	46	3

SB 130 INTRODUCED BY KENNEDY, ET AL.

REQUIRE GENERIC DRUGS FOR WORKERS'
COMPENSATION IN MOST CASES

1/17	INTRODUCED		
1/18	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/18	FIRST READING		
1/18	FISCAL NOTE REQUESTED		
1/25	FISCAL NOTE RECEIVED		
1/29	FISCAL NOTE PRINTED		
1/31	HEARING		
2/04	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/05	REVISED FISCAL NOTE REQUESTED		
2/07	REVISED FISCAL NOTE RECEIVED		
2/08	REVISED FISCAL NOTE PRINTED		
2/12	2ND READING PASSED	49	0
2/13	3RD READING PASSED	49	0

TRANSMITTED TO HOUSE

SB 131

SENATE FINAL STATUS

2/14	FIRST READING		
2/14	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/07	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	91	5
3/12	3RD READING CONCURRED	92	5
	RETURNED TO SENATE		
3/16	SIGNED BY PRESIDENT		
3/18	SIGNED BY SPEAKER		
3/18	TRANSMITTED TO GOVERNOR		
3/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 131		

EFFECTIVE DATE: 7/01/91

SB 131 INTRODUCED BY FRITZ, ET AL.

PROVIDE FOR TRANSFER OF DOMICILE BY
FOREIGN AND DOMESTIC INSURERS

1/17	INTRODUCED		
1/18	REFERRED TO BUSINESS & INDUSTRY		
1/18	FIRST READING		
1/24	HEARING		
2/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/23	2ND READING PASSED	49	0
2/25	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
3/04	FIRST READING		
3/04	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
3/11	HEARING		
3/11	COMMITTEE REPORT—BILL CONCURRED		
3/11	PLACED ON CONSENT CALENDAR		
3/14	3RD READING CONCURRED	98	2
	RETURNED TO SENATE		
3/18	SIGNED BY PRESIDENT		
3/19	SIGNED BY SPEAKER		
3/19	TRANSMITTED TO GOVERNOR		
3/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 132		

EFFECTIVE DATE: 3/20/91

SB 132 INTRODUCED BY TVEIT, ET AL.

ALLOWING TOWING OF THREE VEHICLES ATTACHED
BY TRIPLE SADDLE-MOUNT
BY REQUEST OF DEPARTMENT OF HIGHWAYS

1/17	INTRODUCED		
1/18	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/18	FIRST READING		
1/24	HEARING		
1/24	COMMITTEE REPORT—BILL PASSED		
1/25	2ND READING PASSED	49	0
1/26	3RD READING PASSED	46	0
	TRANSMITTED TO HOUSE		
1/26	FIRST READING		
1/26	REFERRED TO HIGHWAYS & TRANSPORTATION		
3/13	HEARING		
3/14	COMMITTEE REPORT—BILL CONCURRED		
3/18	2ND READING CONCURRED	59	32
	RETURNED TO SENATE		
3/19	3RD READING CONCURRED	64	33
4/03	SIGNED BY PRESIDENT		
4/03	SIGNED BY SPEAKER		
4/04	TRANSMITTED TO GOVERNOR		
4/04	SIGNED BY GOVERNOR		

1 *Senate* BILL NO. *130*
 2 INTRODUCED BY *Kennedy, Burke, Spainish, Connelly*
 3 ~~unintended~~ *Measey, Hagen, Backer, Brucki*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING WORKERS'
 5 HOSPITAL COSTS."
 6 COMPENSATION PAYMENTS FOR PRESCRIPTION DRUGS TO THE PURCHASE
 7 OF GENERIC-NAME PRODUCTS UNLESS A PRESCRIBED BRAND-NAME DRUG
 8 IS MEDICALLY NECESSARY OR THE INJURED WORKER AGREES TO PAY
 9 THE DIFFERENCE IN THE COST FOR THE BRAND-NAME PRODUCT;
 10 AMENDING SECTION 39-71-704, MCA; AND PROVIDING AN EFFECTIVE
 11 DATE."

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 39-71-704, MCA, is amended to read:

14 "39-71-704. Payment of medical, hospital, and related
 15 services -- fee schedules and hospital rates. (1) In
 16 addition to the compensation provided by under this chapter
 17 and as an additional benefit separate and apart from
 18 compensation benefits actually provided, the following must
 19 be furnished:

20 (a) After the happening of the injury, the insurer
 21 shall furnish, without limitation as to length of time or
 22 dollar amount, reasonable services by a physician or
 23 surgeon, reasonable hospital services and medicines when
 24 needed, and such other treatment as may be approved by the
 25 department for the injuries sustained, subject to the

1 requirements of [section 2].

2 (b) The insurer shall replace or repair prescription
 3 eyeglasses, prescription contact lenses, prescription
 4 hearing aids, and dentures that are damaged or lost as a
 5 result of an injury, as defined in 39-71-119, arising out of
 6 and in the course of employment.

7 (c) The insurer shall reimburse a worker for reasonable
 8 travel expenses incurred in travel to a medical provider for
 9 treatment of an injury pursuant to rules adopted by the
 10 department. Reimbursement must be at the rates allowed for
 11 reimbursement of travel by state employees.

12 (2) A relative value fee schedule for medical,
 13 chiropractic, and paramedical services provided for in this
 14 chapter, excluding hospital services, must be established
 15 annually by the department and become effective in January
 16 of each year. The maximum fee schedule must be adopted as a
 17 relative value fee schedule of medical, chiropractic, and
 18 paramedical services, with unit values to indicate the
 19 relative relationship within each grouping of specialties.
 20 Medical fees must be based on the median fees as billed to
 21 the state fund during the year preceding the adoption of the
 22 schedule. The state fund shall report fees billed in the
 23 form and at the times required by the department. The
 24 department shall adopt rules establishing relative unit
 25 values, groups of specialties, the procedures insurers must

1 use to pay for services under the schedule, and the method
2 of determining the median of billed medical fees. These
3 rules must be modeled on the 1974 revision of the 1969
4 California Relative Value Studies.

5 (3) Beginning January 1, 1988, the department shall
6 establish rates for hospital services necessary for the
7 treatment of injured workers. Approved rates must be in
8 effect for a period of 12 months from the date of approval.
9 The department may coordinate this ratesetting function with
10 other public agencies that have similar responsibilities.

11 (4) Notwithstanding subsection (2), beginning January
12 1, 1988, through December 31, 1991, the maximum fees payable
13 by insurers must be limited to the relative value fee
14 schedule established in January 1987. Notwithstanding
15 subsection (3), beginning January 1, 1988, through December
16 31, 1991, the hospital rates payable by insurers must be
17 limited to those set in January 1988."

18 NEW SECTION. Section 2. Payment for prescription drugs

19 -- limitations. (1) The department shall limit payments for
20 prescription drugs to the purchase of less expensive drug
21 products with the same generic name if the generic-name
22 product is the therapeutic equivalent of the specific
23 brand-name drug prescribed by the physician unless:

24 (a) the physician certifies that, in his professional
25 opinion, the prescribed brand-name drug is medically

1 necessary; or

2 (b) the injured worker agrees to pay the difference in
3 the cost between the drug prescribed and the generic-name
4 drug product.

5 (2) For purposes of this section, the terms "brand
6 name", "drug product", and "generic name" have the same
7 meaning as provided in 37-7-502.

8 NEW SECTION. Section 3. Codification instruction.

9 [Section 2] is intended to be codified as an integral part
10 of Title 39, chapter 71, part 7, and the provisions of Title
11 39, chapter 71, part 7, apply to [section 2].

12 NEW SECTION. Section 4. Effective date. [This act] is
13 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0130, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act limiting workers compensation payments for prescription drugs to the purchase of generic-name produces unless a prescribed brand-name drug is medically necessary or the injured worker agrees to pay the difference in the cost for the brand-name product; amending section 39-71-704, MCA; and providing an effective date.

ASSUMPTIONS:

1. The Department of Labor will maintain and distribute to carriers a fee schedule for prescription drugs which limits reimbursements for brand-name drugs based on the "book" price for generic equivalents. The Department of Labor would contract with a private vendor to receive, in an electronic format which is updated quarterly, the FDA list of generic equivalents and the appropriate "book" prices.
2. The fee schedule created by the Department of Labor will be converted to the State Fund computer system. A cross-reference listing of generic-name versus brand-name prices for each drug code will be created.
3. Claims forms, statement forms, and computerized databases will be modified to enable the indication of non-generic brand-name drugs authorized by the physician or chosen by the claimant.
4. The State Fund will pay the full cost of the prescription and bill the claimant for the price difference between the generic-name prescription and the brand-name prescription if the brand-name prescription was not authorized by the physician. A billing statement will be developed to notify claimants of the amount to remit to the State Fund for the purchase of brand-name prescription drugs which were not physician approved.
5. The State Fund would add 0.50 FTE to bill, receipt, and account for the amount due from claimants; 1.00 FTE to administer the provisions of the bill including reviewing copies of the prescription if a brand-name drug is purchased in order to determine if the physician specifically ordered the brand-name drug or if the claimant agreed to pay the difference; and 0.50 FTE to maintain and enhance the modifications made to the State Fund computer system associated with limitations on prescription drug payments.
6. The State Fund currently pays approximately \$2 million per year in benefits for prescribed drug claims. Generic equivalents generally cost 50% less than brand-name prescription drugs. However: 1) not all brand-name prescriptions have generic equivalents; 2) some generic substitution is already occurring; and 3) physicians will determine that some brand-name drugs are medically necessary. Therefore, a 6.25% savings, or \$125,000 per year, is a preliminary estimate of the impact of SB0130 on drug claims.
7. The State Fund and the Department of Labor and Industries will absorb the cost to implement the program within FY91 appropriation authority in order to make the program operational by the July 1, 1991, effective date.

FISCAL IMPACT:

see next page.


ROD SUNDSTED, BUDGET DIRECTOR
Office of Budget and Program Planning

DATE

1-25-91

JOHN "ED" KENNEDY, JR., PRIMARY SPONSOR
Fiscal Note for SB0130, as introduced.

DATE

1/29/91
SB 130

FISCAL IMPACT:

State Fund:	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
FTE	0.00	2.00	2.00	0.00	2.00	2.00
Personal Services	0	50,532	50,532	0	52,937	52,937
Operating Costs	0	1,620	1,620	0	1,620	1,620
Equipment	<u>0</u>	<u>23,916</u>	<u>23,916</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	0	76,068	76,068	0	54,557	54,557
<u>Funding:</u>						
Proprietary Fund	0	76,068	76,068	0	54,557	54,557
Potential Drug Claims Savings:	2,000,000	1,875,000	(125,000)	2,000,000	1,875,000	(125,000)
<u>Labor & Industries:</u>						
<u>Expenditures:</u>						
Operating Costs	0	10,000	10,000	0	10,000	10,000
<u>Funding:</u>						
State Special (02)	0	10,000	10,000	0	10,000	10,000

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Likely decrease in drug claims payments.

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0130, as amended.

DESCRIPTION OF PROPOSED LEGISLATION:

An act limiting workers compensation payments for prescription drugs to the purchase of generic-name produces unless a physician specifies no substitutions or the generic equivalent is unavailable, allowing an injured worker to pay the difference in the cost for the brand-name product; amending section 39-71-704, MCA; and providing an effective date.

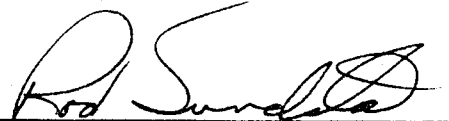
ASSUMPTIONS:

1. Pharmacists will identify which brand-name prescriptions have generic equivalents and will determine maximum reimbursements based on general guidance from insurance carriers.
2. The State Fund currently pays approximately \$2 million per year in benefits for prescribed drug claims. Based on a survey conducted by the bill sponsor, 29% of prescriptions were for a brand name having a generic equivalent. If all of the brand-name prescriptions having generic equivalents in the survey sample were substituted with generic equivalents, the savings would have been 21%.
3. Physicians would, in certain instances, proscribe substitution of brand-name pharmaceuticals with generic equivalents.

FISCAL IMPACT:

State Compensation Mutual Insurance Fund:

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Potential Drug Claims Savings:						
a. All brand names substituted with generic equivalents when available:	2,000,000	1,580,000	(420,000)	2,000,000	1,580,000	(420,000)
b. One-third of currently prescribed brand names substituted with generic equivalents when available:	2,000,000	1,860,000	(140,000)	2,000,000	1,860,000	(140,000)

 2-7-91
 ROD SUNDSTED, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 2-8-91
 JOHN "ED" KENNEDY, JR., PRIMARY SPONSOR DATE
 Fiscal Note for SB0130, as amended.
SB 130
 AS AMENDED

Senator Keating asked Tom Gomez if he was the drafter of Senate Bill 103. Mr. Gomez said he was not.

Senator Keating questioned why the drafter included on page 8, line 14 "or the employees". He asked if group insurance and pension plans are now a part of a cafeteria plan.

Tom Gomez told the Committee that the title of Senate Bill 103 is insufficient and does not meet the standards required for public notice regarding the contents of the bill. He said it does not include notice concerning exclusion of profit sharing arrangements. He said it does not include any mention in the title of the exclusion of payments made pursuant to an authorized deferred compensation plan from the definition of wages for the purposes of unemployment insurance. He explained it does not include notice of several items at issue.

Senator Towe asked Nancy Butler to explain if for workers' compensation purposes this legislation says "wages do not include contributions made by the employee to group or pension plans, or any payment made on behalf of an employee to a cafeteria plan", are all group insurance plans and pension plans excluded. Ms. Butler explained that a state employee's portion of PERS, for example, would be taken out before the benefit was calculated for an injured employee.

Senator Keating asked if, a person making \$10 an hour, and out of the \$10 pays \$2 for group insurance coverage, the workers' compensation and unemployment insurance premiums paid by the employer calculated at \$10. Ms. Butler said that is the case now, but if this bill were to pass they would calculate at \$8.

Senator Lynch said if when an employee is injured, he receives no pay and his insurance premiums are no longer paid. He pointed out that with the present system workers' compensation benefits are currently based on salary and benefits.

Closing by Sponsor:

Senator Noble told the Committee there are drafting problems and other items that need to be addressed. He asked to be given time to revise.

HEARING ON SENATE BILL 130

Presentation and Opening Statement by Sponsor:

Senator Kennedy presented a written statement and exhibits to the Committee regarding Senate Bill 130. He also offered amendments. (Exhibit #3 and #4)

Proponents' Testimony:

Don Judge of the Montana State AFL-CIO spoke from prepared testimony in favor of Senate Bill 130 if amended. (Exhibit #5)

George Wood, Executive Secretary of Montana Self Insurers Association spoke in favor of Senate Bill 130 with amendments.

Bob Heiser of the United Food and Commercial Workers International Union told the Committee that concerns they had have been addressed in the amendments and they were in support of Senate Bill 130.

Mark Eichler, Vice President of the Montana State Pharmaceutical Association told the Committee that Senate Bill 130 presents an opportunity for the pharmacists in Montana to help reduce the pharmaceutical costs to the state fund, as well as other carriers, without harming or reducing the quality of care to the patient. In response to Mr. Judge's concern about availability of generic drugs in rural areas, Mr. Eichler told the Committee that most pharmacies stock generic pharmaceuticals because of federal guidelines mandating substitution of generic for Medicaid patients, as well as some third party insurers.

Pat Sweeney, President of the State Fund spoke in support of Senate Bill 130 as amended. He told the Committee the bill would amount to significant savings.

Bob Jensen of the Montana Department of Labor and Industry told the Committee that with the amendments the department's initial concerns have been addressed, and therefore encourage the passage of Senate Bill 130.

Opponents' Testimony:

NONE.

Questions From Committee Members:

Senator Blaylock asked if the three amendments proposed by Senator Kennedy address the concerns expressed by Don Judge. Senator Kennedy explained that when a physician writes a prescription he has an option to write 'do not substitute' on the prescription. Under those circumstances the pharmacy would bill workers' compensation for the brand name drug.

Senator Towe asked Senator Kennedy if through the authority a pharmacist has under current law to fill prescriptions if the pharmacist can dispense a generic drug if it costs less. Senator Towe questioned if a customer hesitates accepting a generic drug, what does the pharmacist normally do. Senator Kennedy explained that the customer would receive the brand name pharmaceutical and pay the difference. Senator Towe asked if under Senate Bill 130, where the pharmacist has the obligation to dispense a

generic name drug, and the customer refuses, does this generate two bills -- one to the insurer and one to the patient. Senator Kennedy told the Committee that is true.

Senator Towe asked Don Judge if his question regarding availability and responsibility of payments were addressed. Mr. Judge told the Committee that amendment drafting changes would address his concerns.

Senator Devlin asked if Mark Eichler represented pharmacists. Mr. Eichler said he did.

Senator Towe asked Pat Sweeney if the Fund had reviewed the Fiscal Note. Mr. Sweeney explained there would be no fiscal impact on the Fund. Senator Towe asked Mr. Sweeney if he was satisfied with Senator Kennedy's projection of savings. Mr. Sweeney told the Committee he could rely on Senator Kennedy's projection, as Senator Kennedy is a pharmacist.

Closing by Sponsor:

Senator Kennedy told the Committee that Senate Bill 130 would save the state fund and urged a DO PASS recommendation.

EXECUTIVE ACTION ON SENATE BILL 130

Motion:

Senator Blaylock moved the three amendments into Senate Bill 130.

Discussion:

Senator Towe suggested that before the first word "For" on the first amendment it be added "except as provided in Sub-section (3),".

Amendments, Discussion, and Votes:

Senator Blaylock concurred with Senator Towe and incorporated the suggestion into his motion. Motion CARRIED.

Recommendation and Vote:

Senator Lynch moved Senate Bill 130 as amended. Voice vote was unanimous for DO PASS as amended.

ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 11/31/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P		
SENATOR DEVLIN	P		
SENATOR KEATING	P		
SENATOR LYNCH	P 3:20p	X	
SENATOR MANNING	P		
SENATOR NATHE			temporarily
SENATOR PIPINICH	P		
SENATOR TOWE	P		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 4, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 130 (first reading copy -- white), respectfully report that Senate Bill No. 130 be amended and as so amended do pass:

1. Title, lines 6 and 7.

Following: "UNLESS" on line 6

Strike: remainder of line 6 through "THE" on line 7

Insert: "A PHYSICIAN SPECIFIES NO SUBSTITUTIONS OR THE GENERIC-
NAME DRUG IS UNAVAILABLE; ALLOWING AN"

Following: "WORKER" on line 7.

Strike: "AGREES"

2. Title, line 8.

Following: "PRODUCT;"

Insert: "REQUIRING PHARMACISTS TO BILL ONLY FOR THE COST OF THE
GENERIC-NAME PRODUCT, EXCEPT WHEN PURCHASE OF THE BRAND-NAME
DRUG IS OTHERWISE ALLOWED;"

3. Page 3, line 19 through page 4, line 4.

Strike: subsection (1) in its entirety

Insert: "(1) For payment of prescription drugs, an insurer is
liable only for the purchase of generic-name drugs if the
generic-name product is the therapeutic equivalent of the
brand-name drug prescribed by the physician, unless the
physician specifies no substitutions or the generic-name
drug is unavailable.

(2) If an injured worker prefers a brand-name drug, the
worker may pay directly to the pharmacist the difference in
the cost between the brand-name drug and the generic-name
product, and the pharmacist may only bill the insurer for
the cost of the generic-name drug.

(3) The pharmacist may bill only for the cost of the
generic-name product on a signed itemized billing,
except if purchase of the brand-name drug is allowed as
provided in subsection (1).

(4) When billing for a brand-name drug, the pharmacist
shall certify that the physician specified no
substitutions or that the generic-name drug was
unavailable."

Renumber: subsequent subsection

Signed: _____
Richard E. Manning, Chairman

MA - 2-14-91

Amd. Coord.

Sec. of Senate

251226SC.Sj1

Thank you for the opportunity to present Senate Bill 130 to this committee for consideration.

Senate Bill 130 has a rather lengthy and complicated fiscal note in its present form.

I offer you the distributed amendments and request the staff to prepare the amendments for your consideration. If amended, Senate Bill 130 will cause no increase in staff or expenses, and will show a very substantial savings in the State Workers' Compensation Fund. My remarks refer to the amended bill.

Senate Bill 130, if amended, is a bill that will save a considerable amount of money in the financially troubled State Compensation Mutual Insurance Fund. The Fund's potential deficit is estimated at more than Two Hundred Million Dollars (\$200,000,000.00).

Senate Bill 130 simply requires a pharmacy to use generic drugs on Workers' Compensation prescriptions. This is not a new concept to the State of Montana, or pharmacy's in the state. The Medicaid program in the state presently requires this.

The proceedings involved in a Workers' Compensation prescription is this: The physician sees an injured worker. The physician writes a prescription to treat the injury. The patient takes the

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 3
DATE 1/31/91
BILL NO. SB 130

prescription to a pharmacy. The pharmacy fills the prescription, and gets the required information from the patient, i.e. employer, date of accident, claim number, etc. The pharmacy bills the State Compensation Fund. The Fund pays the pharmacy the amount billed. None of this would change under the amended Senate Bill 130, except the pharmacy would be required to fill the prescriptions with a generic drug with the following possible exceptions:

1. The doctor may specify "no substitution" on the prescription.
2. The patient may request no substitution, and pay the difference in cost between the brand name and generic to the pharmacy.
3. The generic drug is not available to the pharmacist.

Please refer to handout.

Thank you for your consideration.

Senate Bill 130
Sponsor - Senator Kennedy and 20 other legislators

1. Amendments
2. Provider Bulletin
3. Product selection permitted.
Savings passed on.
4. State Fund Letter of 1-15-91
5. Fiscal Impact

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4
DATE 1/31/91
BILL NO. SB130

Senate Bill 130

New Section. Section 2.

Delete (1) and (1)a.

Replace with:

For payment of prescription drugs, an insurer is only liable for the purchase of generic-name drugs if the generic-name product is the therapeutic equivalent of the brand-name drug prescribed by the physician unless the physician specifies no substitutions.

Delete (b).

Replace with:

(2) If a worker prefers a brand-name drug, the worker may pay the difference between the price of the brand-name drug and the price of the generic-name drug direct to the pharmacist, and the pharmacist must only bill the insurer for the price of the generic-name drug.

Add (3):

The pharmacist must bill only the generic-name price on a signed itemized billing. When billing for a brand-name drug, the pharmacist must certify that the physician specified no substitutions, or that the generic-name drug was unavailable.



STATE COMPENSATION MUTUAL INSURANCE FUND

P.O. BOX 4759

HELENA, MONTANA 59604-4759

Stan Stephens, Governor

GENERAL INFORMATION (406) 444-6500

MAY 1990

PROVIDER BULLETIN

SUBJECT: PRESCRIPTION MEDICINES

Montana law requires workers' compensation insurance carriers to provide reasonable and necessary medical benefits to injured workers.

In keeping with its costs containment efforts, the State Compensation Mutual Insurance Fund (State Fund) believes this statutory requirement will be met if generic instead of "brand name" drugs are dispensed, when possible, to patients insured by the State Fund.

Prescriptions for medicines which do not have a generic equivalent or for which the physician has indicated "no substitutions" will be honored.

Through your cooperation in this program, considerable cost savings can be achieved, at no detriment to the patient.

Questions or comments concerning this program may be directed to:

P. J. Strizich, Benefits Support Director
State Compensation Mutual Insurance Fund
P. O. Box 4759
Helena, MT 59604-4759
Phone (406) 444-6484

37-7-505

37-7-505. Product selection permitted -- limitation. (1) Except as limited by subsection (2) of this section and unless instructed otherwise by the purchaser, the pharmacist who receives a written or oral prescription for a specific drug product by brand or proprietary name may select a less expensive drug product with the same generic name, the same strength, quantity, dose, and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent, bioequivalent, and bioavailable.

(2) If, in the professional opinion of the prescriber, it is medically necessary for his patient that an equivalent drug product not be selected, the prescriber may so indicate by certifying that in his professional judgment the specific brand-name drug product is medically necessary for that particular patient. In the case of a prescription transmitted orally, the prescriber must expressly indicate to the pharmacist that the brand-name drug product prescribed is medically necessary.

History: En. 66-1530 by Sec. 3, Ch. 403, L. 1977; R.C.M. 1947, 66-1530.

37-7-507

37-7-507. Savings passed on. (1) A pharmacist selecting a less expensive drug product must pass on to the purchaser the full amount of the savings realized by the product selection. In no event may the pharmacist charge a different professional fee for dispensing a different drug product than the drug product originally prescribed.

(2) If the prescriber prescribes a drug product by its generic name, the pharmacist must, consistent with reasonable judgment, dispense the lowest retail priced, therapeutically equivalent brand which is in stock.

History: En. 66-1532 by Sec. 5, Ch. 403, L. 1977; R.C.M. 1947, 66-1532.



STATE COMPENSATION MUTUAL INSURANCE FUND

P.O. BOX 4759
HELENA, MONTANA 59604-4759

Stan Stephens, Governor
GENERAL INFORMATION (406) 444-6500

January 15, 1991

Senator Ed Kennedy
Montana Legislature
CAPITOL STATION
Helena, MT 59620

Dear Senator Kennedy:

This is in response to your telephone call to our receptionist requesting information concerning the cost of drugs.

For fiscal years 1989 and 1990, the State Compensation Mutual Insurance Fund (State Fund) cost for drugs was \$1,422,544 and \$1,617,11 respectively. This, of course, does not include the costs incurred by insurance carriers or self-insurers who also adjust workers' compensation claims.

As shown by the attached "Provider Bulletin" which was mailed in June of 1990, the State Fund has attempted to encourage the use of generic drugs where possible.

We have not performed a study regarding any savings which are generated through the use of generic drugs, but it is generally agreed, such savings do exist. Perhaps the Blue Cross/Blue Shield Company or the Department of Social and Rehabilitative Services, in regard to their medicare/medicaid programs, have performed such studies. We are not sure such studies would be totally applicable to workers' compensation claims, but they may be able to provide you with additional information. Many drugs prescribed for workers' compensation claimants do not have a generic equivalent. In addition, some physicians specifically prescribe a brand name drug and indicate "no substitutions."

Please contact us if we can be of further assistance.

Sincerely yours,


JAMES J. MURPHY
Executive Vice President

JJM/bac

enclosure

SENATE BILL 130

A list of the most current 200 prescription billings to the State Compensation Fund were requested and received by Senator Kennedy.

197 of these were used. Some did not have medication strength and could not be used.

23% 45 Had no generic available.

48% 95 Were already generic.

29% 57 Were brand name that have a generic available.

Results: 197 prescriptions

Cost of 197 prescriptions as billed to Workers' Compensation is \$6,889.38.

Cost of 197 prescriptions if generics were used on the other 57 is \$5,424.32 (could vary somewhat from pharmacy to pharmacy).

Savings	\$1,465.06
---------	------------

% Savings	21%
-----------	-----

Total Prescriptions Paid by Workers' Comp:

1989 \$1,422,544.00

21% x \$1,422,544.00 = \$298,734.24

1990

21% x \$1,617,110.00 = \$339,593.10

Pharmaceutical Equivalents: Same active ingredients, and are identical in strength of concentration, dosage, form, and route of administration.

Therapeutic Equivalents: Can be expected to have the same clinical effect when administered to patients under the conditions specified in the labeling.

Bioavailability: The ratio and extent to which the active drug ingredient or therapeutic ingredient is absorbed from a drug product and becomes available at the site of drug action.

Bioequivalent: Display comparable bioavailability when studied under similar experimental conditions.

In Vitro: Within a glass. Observable in a test tube.

In Vivo: Within the living body.



DONALD R. JUDGE
EXECUTIVE SECRETARY

110 WEST 13TH STREET
P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-1708

TESTIMONY OF DON JUDGE ON SENATE BILL 130 BEFORE THE SENATE LABOR COMMITTEE,
JANUARY 31, 1991

Mr. Chairman, members of the committee, for the record, my name is Don Judge, Executive Secretary of the Montana State AFL-CIO, here today to offer testimony on Senate Bill 130.

We would like to recognize the efforts of the sponsor for drafting a bill that helps to hold down the costs of workers compensation.

But we have questions about this bill and its provisions for availability of the generic drug and the assignment of responsibility for making sure that the generic drug is requested.

First, who is responsible for a generic drug being substituted for a prescribed name-brand drug? The doctor will make prescriptions to treat the symptoms of the patient, most likely, giving no consideration whether a generic brand is available.

The pharmacists will fill the prescription, often, giving no consideration to a generic brand drug. Must the injured worker be required to request the generic brand drug?

If the injured worker is required to request a generic drug and the pharmacist or doctor makes a mistake supplying a brand-name drug when a generic is available. Who pays? Is the injured worker at fault?

On the question of availability. In rural Montana not every pharmacy has generic brands in stock. If a pharmacy does not stock a generic brand it could take several days to get the prescribed drug from a warehouse, perhaps even more in Montana's uncertain weather. It would be unfair and perhaps even dangerous, to have an injured worker await receipt of the generic drug in accordance with this bill. And it would be equally unfair to force them to pay the additional cost of a brand name drug in such instances.

We would request that a new subsection "C" be added on page 4, to provide for an exception to this requirement if generic drugs are not available in the injured workers community.

We would also, request that an amendment be added to an appropriate section of the bill requiring physicians to request a generic brand drug when completing prescriptions for injured workers on workers compensation. This request could either be in writing or a phone call.

With these amendments we would ask this committee to give SB 130 a "do pass" recommendation.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 5

DATE 1/31/91

RH11 NO. SB130

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 31ST day of January, 1991.

Name: Mark Eickler RPh. FASCP.

Address: 4224 GreenAcre
Helena

Telephone Number: 449-2555

Representing whom?

Montana State Pharmaceutical Assoc.

Appearing on which proposal?

SB130- Ed Kennedy

Do you: Support? X Amend? Oppose?

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY
SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 6

DATE 1/31/91

BILL NO. SB130

1131191

Senate Labor

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Wm. Butler	State Fund	SB 103		☒
Wm. Hartman	MEH	103		☒
Jay Beardon	USWA	103		☒
Charles R. Brooks	NAT RETAIL ASSOC	103	☒	
Mark Gehler	Montana State Pharm Assoc	130	☒	
George Wood	MT. Self Insurers Assn.	130	☒	
DAN EDWARDS	OCRA	103		☒
Pat Sweeney	State Fund	130	☒	
Gary Speth	Nat Council of Comp An	103		☒
H. Bales	Montana Chamber	105	☒	
Don Judge	MT STATE AFL-CIO	SB 103		☒
Don Judge	MT STATE AFL-CIO	SB 130	☒	Amend
Bob Jensen	Nat Fedl of Grocer	SB 130	☒	amend
Nancy Butler	State Fund	SB 130	☒	amend

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIR CAROLYN SQUIRES, on March 7, 1991, at
3:00 p.m.

ROLL CALL

Members Present:

Carolyn Squires, Chair (D)
Tom Kilpatrick, Vice-Chairman (D)
Steve Benedict (R)
Vicki Cocchiarella (D)
Ed Dolezal (D)
Jerry Driscoll (D)
Russell Fagg (R)
H.S. "Sonny" Hanson (R)
David Hoffman (R)
Royal Johnson (R)
Thomas Lee (R)
Mark O'Keefe (D)
Bob Pavlovich (D)
Jim Southworth (D)
Fred Thomas (R)
Dave Wanzenried (D)
Tim Whalen (D)

Members Excused:

Gary Beck (D)

Staff Present: Eddye McClure, Legislative Council
Jennifer Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

HEARING ON SB 130

Presentation and Opening Statement by Sponsor:

SEN. ED KENNEDY, JR., Senate District 3, Kalispell, presented
written testimony and a handout. EXHIBIT 1

Proponents' Testimony:

Roger Tippy, Montana State Pharmaceutical Association, stated the
Board of Directors supported the bill.

Darrell Holzer, AFL-CIO, presented written testimony. EXHIBIT 2

Darrell Holzer, AFL-CIO, presented written testimony. EXHIBIT 2

Bob Heiser, United Food and Commercial Workers' Union, stated his support.

Bob Jensen, Administrator, Department of Labor and Industry, stated his support.

Pat Sweeney, State Fund, stated his support on behalf of George Wood, Self Insurers' Association. The bill will result in cost savings.

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor:

SEN. KENNEDY said SB 130 is an opportunity to save money in the troubled State Fund. Rep. Wanzenried will carry the bill.

EXECUTIVE ACTION ON SB 130

Motion/Vote: REP. PAVLOVICH MOVED SB 130 BE CONCURRED IN. Motion carried unanimously. Reps. Dolezal, O'Keefe, and Thomas were absent for the vote.

HEARING ON SB 30

Presentation and Opening Statement by Sponsor:

REP. TOM TOWE, Senate District 46, Billings, said SB 30 defines a professional strikebreaker. A professional strikebreaker is prohibited from taking employment or replacing a person who is on strike, which is contained in the law since about 1975. However, there is no definition of a professional strikebreaker. When the United Mine Workers struck the Decker coal mine, many scabs were brought in to work the mine and crossed the picket line. They were recognized as people who had worked in other strikes. He submitted a list of the people to the County Attorney and asked him to prosecute under this law. The law says that it's illegal to hire a professional strikebreaker or to be a strikebreaker. The County Attorney's office said they didn't know what a professional strikebreaker was because it wasn't defined in the Code. Page 1, Line 23, states that a professional strikebreaker means a person who, within the previous five years, has been employed two or more times in a strike or has offered himself three or more times for employment to replace a striker. Page 2, Lines 6-11, states that a professional strikebreaker does not include a person who has been continuously employed in Montana by the same employer for at least one year prior to the commencement of the strike. A professional strikebreaker was defined in the law as a person who customarily and repeatedly offered himself for employment. That definition didn't mean anything, so it is

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE 3/7/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JERRY DRISCOLL	✓		
REP. MARK O'KEEFE	✓		
REP. GARY BECK			✓
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE	✓		
REP. BOB PAVLOVICH	✓		
REP. JIM SOUTHWORTH	✓		
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED	✓		
REP. TIM WHALEN	✓		
REP. TOM KILPATRICK, V.-CHAIR	✓		
REP. CAROLYN SQUIRES, CHAIR	✓		

HOUSE STANDING COMMITTEE REPORT

March 8, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that Senate Bill 130 (third reading copy -- blue) be concurred in .

Signed: Carolyn Squires
Carolyn Squires, Chairman

Carried by: Rep. Wanzenried

Thank you for the opportunity to present Senate Bill 130 to this committee for consideration.

Senate Bill 130 will cause no increase in staff or expenses, and will show a very substantial savings in the State Workers' Compensation Fund.

Senate Bill 130, is a bill that will save a considerable amount of money in the financially troubled State Compensation Mutual Insurance Fund. The Fund's potential deficit is estimated at more than Two Hundred Million Dollars (\$200,000,000.00)

Senate Bill 130 simply requires a pharmacy to use generic drugs on Workers' Compensation prescriptions. This is not a new concept to the State of Montana, or pharmacy's in the state. The Medicaid program in the state presently requires this.

The proceedings involved in a Workers' Compensation prescription is this: The physician sees an injured worker. The physician writes a prescription to treat the injury. The patient takes the prescription to a pharmacy. The pharmacy fills the prescription, and gets the required information from the patient, i.e. employer, date of accident, claim number, etc. The pharmacy bills the State Compensation Fund. The Fund pays the pharmacy the amount billed. None of this would change under the amended Senate Bill 130, except the pharmacy would be required to fill

the prescriptions with a generic drug with the following possible exceptions:

1. The doctor may specify "no substitution" on the prescription.
2. The patient may request no substitution, and pay the difference in cost between the brand name and generic to the pharmacy.
3. The generic drug is not available to the pharmacist.

Please refer to handout.

Thank you for your consideration.

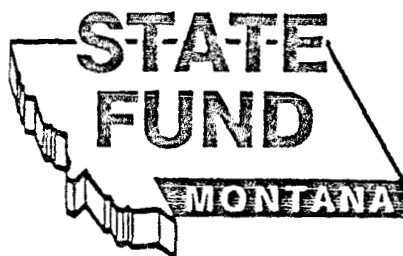
EXHIBIT 1
DATE 3/7/91
HB SB 130

Senate Bill 130

Sponsor - Senator Kennedy and 20 other legislators

1. Provider Bulletin.
2. Product selection permitted. Savings passed on.
3. State Fund Letter of 01-15-91.
4. Fiscal Impact.
5. Definitions.

3/7/91



STATE COMPENSATION MUTUAL INSURANCE FUND

P.O. BOX 4759

HELENA, MONTANA 59604-4759

Stan Stephens, Governor

GENERAL INFORMATION (406) 444-6300

MAY 1990

PROVIDER BULLETIN

SUBJECT: PRESCRIPTION MEDICINES

Montana law requires workers' compensation insurance carriers to provide reasonable and necessary medical benefits to injured workers.

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Questions or comments concerning this program may be directed to:

P. J. Strizich, Benefits Support Director
State Compensation Mutual Insurance Fund
P. O. Box 4759
Helena, MT 59604-4759
Phone (406) 444-6484

EXHIBIT 1
DATE 3/7/91
HB SB 130

Page 2

37-7-505

37-7-505. Product selection permitted -- limitation. (1) Except as limited by subsection (2) of this section and unless instructed otherwise by the purchaser, the pharmacist who receives a written or oral prescription for a specific drug product by brand or proprietary name may select a less expensive drug product with the same generic name, the same strength, quantity, dose, and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent, bioequivalent, and bioavailable.

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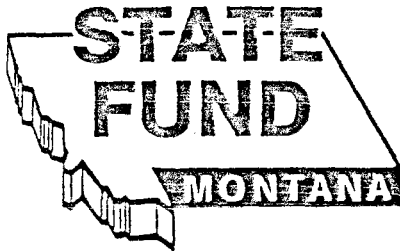
History: En. 66-1530 by Sec. 3, Ch. 403, L. 1977; R.C.M. 1947, 66-1530.

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STATE COMPENSATION MUTUAL INSURANCE FUND

P.O. BOX 4759

HELENA, MONTANA 59604-4759

Stan Stephens, Governor

GENERAL INFORMATION (406) 444-6500

January 15, 1991

Senator Ed Kennedy
Montana Legislature
CAPITOL STATION
Helena, MT 59620

Dear Senator Kennedy:

This is in response to your telephone call to our receptionist requesting information concerning the cost of drugs.

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Please contact us if we can be of further assistance.

Sincerely yours,


JAMES J. MURPHY
Executive Vice President

JJM/bac

enclosure

EXHIBIT 1
DATE 3/7/91
HB SB130

SENATE BILL 130

A list of the most current 200 prescription billings to the State Compensation Fund were requested and received by Senator Kennedy.

197 of these were used. Some did not have medication strength and could not be used.

23% 45 Had no generic available.

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29% 57 Were brand name that have a generic available.

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Bioequivalent: Display comparable bioavailability when studied under similar experimental conditions.

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In Vivo: Within the living body.



EXHIBIT 2
DATE 3/7/91
HB SB 130

DONALD R. JUDGE
EXECUTIVE SECRETARY

110 WEST 13TH STREET
P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-1708

TESTIMONY OF DARRELL HOLZER ON SENATE BILL 130 BEFORE THE HOUSE
LABOR COMMITTEE, MARCH 7, 1991.

Madam Chair, members of the Committee, for the record my name is Darrell Holzer representing the Montana State AFL-CIO. We are here in support of Senate Bill 130.

While we were never concerned about the intent of SB130, we were however, concerned about some of the language contained in it's original form. We are now pleased to say that our concerns have been addressed and dealt with in a matter more favorable to workers.

While Senate Bill 130 will serve to relieve some of the financial burden of the ~~the~~ ^{the} system, it will most importantly insure that injured workers receive the adequate medical treatment they so richly deserve. We would therefore, request that this committee give SB130 a "DO PASS" recommendation. Thank you.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO.

SB 130

DATE 3/7/91

SPONSOR(S)

Sen. Ed Kennedy, Jr.

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
DEWEY HALL	LOCAL 10 MT	X	
DARRELL HOLZER	MONT. STATE AFL-CIO	X	
Bob Jensen	Dep't. of Labor & Industry	X	
MARK LANGBORN	AGSOME	X	
DAT Sweeney	STATE FUND	X	
George Wood	SELF INS. DS	X	
Roger Tippy	Mt. St. Pharmaceutical Assn	X	
Bob Heiser	UFCW	X	
James T MULAR	TCL	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

SENATE BILL NO. 130

INTRODUCED BY KENNEDY, PIPINICH, THAYER, CONNELLY,

WANZENRIED, MEASURE, COHEN, O'KEEFE, T. BECK,

VAN VALKENBURG, DOHERTY, HARPER, BECKER, BRUSKI,

HOCKETT, GROSFIELD, JERGSON, CRIPPEN, SVRCEK,

DEVLIN, MAZUREK

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING WORKERS' COMPENSATION PAYMENTS FOR PRESCRIPTION DRUGS TO THE PURCHASE OF GENERIC-NAME PRODUCTS UNLESS A-PRESCRIBED-BRAND-NAME-DRUG IS--MEDICALLY--NECESSARY--OR--THE A PHYSICIAN SPECIFIES NO SUBSTITUTIONS OR THE GENERIC-NAME DRUG IS UNAVAILABLE; ALLOWING AN INJURED WORKER AGREES TO PAY THE DIFFERENCE IN THE COST FOR THE BRAND-NAME PRODUCT; REQUIRING PHARMACISTS TO BILL ONLY FOR THE COST OF THE GENERIC-NAME PRODUCT, EXCEPT WHEN PURCHASE OF THE BRAND-NAME DRUG IS OTHERWISE ALLOWED; AMENDING SECTION 39-71-704, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-704, MCA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services -- fee schedules and hospital rates. (1) In addition to the compensation provided by under this chapter and as an additional benefit separate and apart from

compensation benefits actually provided, the following must be furnished:

(a) After the happening of the injury, the insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the department for the injuries sustained, subject to the requirements of [section 2].

(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(c) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

(2) A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, must be established annually by the department and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and

REFERENCE BILL

1 paramedical services, with unit values to indicate the
 2 relative relationship within each grouping of specialties.
 3 Medical fees must be based on the median fees as billed to
 4 the state fund during the year preceding the adoption of the
 5 schedule. The state fund shall report fees billed in the
 6 form and at the times required by the department. The
 7 department shall adopt rules establishing relative unit
 8 values, groups of specialties, the procedures insurers must
 9 use to pay for services under the schedule, and the method
 10 of determining the median of billed medical fees. These
 11 rules must be modeled on the 1974 revision of the 1969
 12 California Relative Value Studies.

13 (3) Beginning January 1, 1988, the department shall
 14 establish rates for hospital services necessary for the
 15 treatment of injured workers. Approved rates must be in
 16 effect for a period of 12 months from the date of approval.
 17 The department may coordinate this ratesetting function with
 18 other public agencies that have similar responsibilities.

19 (4) Notwithstanding subsection (2), beginning January
 20 1, 1988, through December 31, 1991, the maximum fees payable
 21 by insurers must be limited to the relative value fee
 22 schedule established in January 1987. Notwithstanding
 23 subsection (3), beginning January 1, 1988, through December
 24 31, 1991, the hospital rates payable by insurers must be
 25 limited to those set in January 1988."

1 NEW SECTION. Section 2. Payment for prescription drugs
 2 -- limitations. (a) The department shall limit payments for
 3 prescription drugs to the purchase of less expensive drug
 4 products with the same generic name if the generic name
 5 product is the therapeutic equivalent of the specific
 6 brand-name drug prescribed by the physician unless:

7 (a) the physician certifies that, in his professional
 8 opinion, the prescribed brand-name drug is medically
 9 necessary; or

10 (b) the injured worker agrees to pay the difference in
 11 the cost between the drug prescribed and the generic name
 12 drug product. (1) FOR PAYMENT OF PRESCRIPTION DRUGS, AN
 13 INSURER IS LIABLE ONLY FOR THE PURCHASE OF GENERIC-NAME
 14 DRUGS IF THE GENERIC-NAME PRODUCT IS THE THERAPEUTIC
 15 EQUIVALENT OF THE BRAND-NAME DRUG PRESCRIBED BY THE
 16 PHYSICIAN, UNLESS THE PHYSICIAN SPECIFIES NO SUBSTITUTIONS
 17 OR THE GENERIC-NAME DRUG IS UNAVAILABLE.

18 (2) IF AN INJURED WORKER PREFERENCES A BRAND-NAME DRUG, THE
 19 WORKER MAY PAY DIRECTLY TO THE PHARMACIST THE DIFFERENCE IN
 20 THE COST BETWEEN THE BRAND-NAME DRUG AND THE GENERIC-NAME
 21 PRODUCT, AND THE PHARMACIST MAY ONLY BILL THE INSURER FOR
 22 THE COST OF THE GENERIC-NAME DRUG.

23 (3) THE PHARMACIST MAY BILL ONLY FOR THE COST OF THE
 24 GENERIC-NAME PRODUCT ON A SIGNED ITEMIZED BILLING, EXCEPT IF
 25 PURCHASE OF THE BRAND-NAME DRUG IS ALLOWED AS PROVIDED IN

1 SUBSECTION (1).

2 (4) WHEN BILLING FOR A BRAND-NAME DRUG, THE PHARMACIST
3 SHALL CERTIFY THAT THE PHYSICIAN SPECIFIED NO SUBSTITUTIONS
4 OR THAT THE GENERIC-NAME DRUG WAS UNAVAILABLE.

5 ~~(2)~~(5) For purposes of this section, the terms "brand
6 name", "drug product", and "generic name" have the same
7 meaning as provided in 37-7-502.

8 NEW SECTION. Section 3. Codification instruction.
9 [Section 2] is intended to be codified as an integral part
10 of Title 39, chapter 71, part 7, and the provisions of Title
11 39, chapter 71, part 7, apply to [section 2].

12 NEW SECTION. Section 4. Effective date. [This act] is
13 effective July 1, 1991.

-End-